MEMORIAL

OF

MARY ANN W. VAN NESS,

PRAYING

An extension of the jurisdiction of the Supreme Court, so as to allow her an appeal from the decision of the circuit court for the District of Columbia.

MARCH 9, 1848.

Referred to the Committee on the Judiciary, and ordered to be printed.

To the honorable the Senate and House of Representatives in Congress assembled:

The memorial of Mary A. W. Van Ness, a resident of the District of Columbia,

RESPECTFULLY REPRESENTS:

That on the 6th day of August, in the year 1845, your memorialist was, in the city of Philadelphia, in the State of Pennsylvania, united in marriage with the late John P. Van Ness, of the city of Washington; that in March, 1846, her said husband died intestate, (as declared by his next of kin,) and leaving a large estate, both real and personal; that shortly after his death his brother, Cornelius P. Van Ness, applied for and obtained letters of administration on the said personal estate from the orphans' court of Washington county, in said District; that by the laws in force in said county the widow of a decedent is entitled to administration on her husband's estate before any other person, and her preferred right can only be lost after a summons regularly served on her; that your memorialist, shortly after the granting of administration aforesaid, (which was done without any summons or notice to her,) presented her claim as widow to the administration, and prayed the orphans' court to revoke the said letters so illegally granted; that the said Cornelius P. Van Ness filed his answer in said court, denying that your memorialist was widow of the deceased, and an issue was directed by said court, to be tried by a jury in the circuit court of said District for the county of Washington, upon the fact of widow or not; that accordingly, the said issue came on for trial by jury before the said circuit court at its October term, 1846; that the two associate judges of said court proceeded on said trial, the chief justice being absent by reason of sickness; that the said trial occupied more than six weeks of the said term of court, and resulted in a compulsory verdict against your memorialist, under the peremptory direction given by said associate judges to the

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jury, "that there was no evidence of a legal marriage" between your memorialist and said John P. Van Ness; that during said trial your memorialist, by her counsel, filed twelve bills of exception to the rulings of said associate judges, involving important questions of law and evidence, and she afterwards prosecuted a writ of error to the present term of the Supreme Court of the United States to have the said exceptions reviewed and the errors of said judges corrected and reversed; that the said writ of error has, *on the motion* of said Cornelius P. Van Ness, been lately dismissed by the Supreme Court, because, under existing laws in said District, the said Supreme Court had not jurisdiction in the premises; that your memorialist is thus without redress against the manifest errors of said associate judges in destroying her dearest rights, unless by the favorable consideration of the Congress in passing a law to authorize the said Supreme Court to take jurisdiction in said case, and all similar cases hereafter to arise; that the privation of your memorialist from the ordinary right of the citizen, to have the errors of the inferior court reviewed by the Supreme Court, is owing to the imperfections and omissions of ancient laws; that in every case originating in said circuit court, where the matter in controversy is of the value of $1,000, the right to sue out a writ of error upon the final judgment, order, or decree of said circuit court, is secured by an act of Congress; that under said issue the right of your memorialist amounted in pecuniary value to many thousands of dollars, and she is therefore, if money measures the right of appeal, fully entitled to this common right of the citizen; that your memorialist has thus been denied the right of a trial upon the facts of her case by a jury, and upon the law of her case by an appellate court, and thus two associate judges of an inferior court have finally settled the law and facts involved in said issue by the assumption of powers the most despotic, which ought to be reviewed; that the injustice done to her claim may be perpetrated without the possibility of redress by the said circuit court in every case hereafter sent to it for trial from the orphans' court, for there is no other difficulty interposed against the jurisdiction of the Supreme Court over your memorialist's case than exists in every issue which may be sent to said circuit court, for trial, from the orphans' court. And what is now the fate of your memorialist—crushed as she is by an *irreversible* action of two associate judges—may be the fate of every widow and orphan whose rights must hereafter, of necessity, pass through the ordeal of an issue sent to said circuit court. Your memorialist is a very humble and friendless woman, but she submits that she is entitled to redress against error or prejudice in this land of free and equal laws; she does not ask for and will not receive any advantage or privilege to her case, but only seeks the fair and equal chance of meeting her adversary and the said associate judges upon the legal merits of her claim, before the highest court known to the law; and she boldly asserts, and tenders herself ready to prove the assertion, that all experience in this District teaches the necessity of reviewing the errors of inferior courts, for of late years the said circuit court has repeatedly been reversed by the Supreme Court, as numerous cases will show, in some of which the Supreme Court declare that the rudiments of law have been disregarded.

Your memorialist considers the existence of an irreversible and irresponsible judicial power in any government as a great evil, requiring immediate reform at the hands of a just legislature. She asks for a general law—a law for all cases like hers—a law that, while it may protect her rights, will

also hereafter protect the rights of other citizens in this District, where rights the most sacred are in so much jeopardy by the fallibility of judges—a law, in substance, such as the State of Maryland has enacted upon this very subject since the cession of this District to the United States—a wise and necessary Maryland amendment to an old and imperfect Maryland act, dated so far back as 1798, under which, with its radical defects, every case originating in the orphans' court of this District must pass. Your memorialist is advised that, by the terms of that act of 1798, all cases directed by said orphans' court for trial of an issue in the circuit court are to be there tried by a jury *expressly* placed under the binding control of the court; and the verdict thus obtained, when certified to the orphans' court, is conclusive as to the matter so put in issue; and yet there is no appeal from the errors of said circuit court, in procuring said verdict, as already decided by the Supreme Court in the opinion dismissing her case for want of jurisdiction; so that, although the vital error may exist in the proceedings of the circuit court, yet there is no appeal provided from aught but "a final judgment, order, or decree of the circuit court;" and these proceedings being *only conducive* to the final judgment in the orphans' court, are not subject to review in any possible form, as now decided.

Your memorialist further shows that a similar defect existed in the laws of Maryland until the year 1832, in which year the legislature of Maryland passed the act of 1832 (ch. 208) to allow the appeal in cases past as well as future, which act was, as is well known, designed to allow an appeal in the celebrated case of Davis & Calvert, in which a will having been established on the trial of an issue sent by the orphans' court of Montgomery county, the legislature of that State, by this retrospective act, allowed an appeal; and the case was accordingly considered by the court of appeals of Maryland, and fully reversed, as appears by the report thereof in the 5th volume of Gill and Johnson's Reports, page 297.

Your memorialist, in support of these views, refers to the two following extracts from the opinion of the Supreme Court, rendered at this term, in the case of Van Ness *vs.* Van Ness, which is open to the inspection of any person, though not yet printed, viz:

"*Whatever errors therefore may have been committed, and however apparent they may be in the record, yet we have not the power to correct them,* unless the circuit court has passed a final judgment, order, or decree, in the cause before it. * * * * * The act of assembly of Maryland appears to have received, in practice in that State, the same construction that we have given to it. There is, indeed, no judicial opinion on the subject, but there is no ground for supposing that a writ of error was ever sued out under that law. In 1832 an act was passed authorizing a writ of error in such cases, and staying proceedings in the inferor courts until a decision was had in the appellate court, and this law embraces cases which had been tried before its passage, as well as those which should afterwards take place."

Your memorialist desires no other relief than such as was afforded by the legislature of Maryland, by the act of 1832, to cover past as well as future cases. If it be objected that such legislation is retrospective, she admits the fact, but denies that such retrospective laws are either unjust or illegal; and if they are so, the Supreme Court will pronounce upon the act now prayed for, and declare it inoperative—a result which she has no objection in that event to abide by. Such laws have always received the

judicial sanction, where they settle no right, but merely provide a remedy to correct errors or procure a new hearing.

In the case of Calder *vs.* Bull, (3 Dallas, p. 386,) the legislature of Connecticut, after a final decision by the court of probates against a will, had passed a law directing *a new hearing* by the same court, with liberty of appeal therefrom, in six months; and this remedial, though retrospective act, was sustained by all the courts of Connecticut, (see the statement in 3 Dallas, p. 393,) and being brought before the Supreme Court, was sustained as consistent with the federal constitution. Again, in the case of Sheppard *vs.* Wilson, (5 Howard, p. 212,) the right to a writ of error having been lost, and a motion made to dismiss it, Congress, *after the motion was made*, passed a retrospective act, covering the writ of error, and the Supreme Court expressly say that the legislation, "since the motion was made," by Congress, "has removed the difficulty;" and though it will be seen by the note of the reporter in the appendix to 5th Howard, that the Supreme Court was mistaken as to the retrospective law of Congress extending to the State of Iowa, yet that mistake in no way affects the force of the decision, made under the idea that the law extended to appeals from the courts in Iowa. On this same point, and as an illustration thereof, your memorialist is advised that able judicial opinions may be found in the cases of Tate and wife *vs.* Stoolbofoos, 16 Sergeant and Rawle's Reports, p. 37, and Underwood and Lilly, 10 Sergeant and Rawle, p. 97.

Your memorialist, for the purpose of presenting the peculiar equity of her case, and the hardship of denying the relief prayed for, avers it to be a fact well known in the community, and easily susceptible of proof, that a majority of the jury empanelled in her case were ready, without argument on the facts by her counsel, to render a verdict in her favor; but their right so do do, upon a mass of evidence before them, was denied by the associate judges, who instructed them that there was no evidence for their consideration, and in obedience to which extraordinary ruling the verdict was rendered by the jury.

In conclusion, your memorialist with confidence declares, that as her prayer is fair and just, it ought to be allowed, so there can be no opposition advanced to it *out of Congress*, but what comes from an interested quarter, from the party who shrunk from the arbitrament of a jury on the facts, and recently from the opinion of the Supreme Court on the law by the motion to dismiss her case, and who will doubtless now seek, by every argument, to prevent the favorable consideration of the prayer of your memorialist by the Congress of the United States; and, as in duty bound, your petitioner will ever pray.

MARY ANN WALLACE VAN NESS.

DISTRICT OF COLUMBIA, *Washington County, to wit:*

On this fourth day of March, 1848, before the subscriber, a justice of the peace in and for the county of Washington and District of Columbia, personally appears Mary A. W. Van Ness, the within petitioner, and made oath on the Holy Evangely of Almighty God, that the facts stated in the aforegoing petition are true to the best of her knowledge and belief.

Sworn before (the word "petitioner" being first interlined)

B. K. MORSELL, *J. P.*